

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
SAMUEL B. SPITALNY, JACOB L.)	
SPITALNY, STEPHEN QUILLINAN and)	
S&Q DATA LLC,)	
)	
Plaintiffs,)	
)	
v.)	
)	
NICHOLAS FIORILLO and)	
GOTSPACE DATA EQUITY FUND,)	
LLC,)	
)	
Defendants,)	
)	
AND)	
)	
NICHOLAS FIORILLO,)	Civil Action No: 1:22-cv-11413
GOTSPACE DATA EQUITY FUND,)	
LLC, GOTSPACE EQUITY FUND I,)	
LLC, GOTSPACE EQUITY FUND 1, LLC,)	
GOTSPACE SELF STORAGE,)	
HOLDINGS, LLC, GOTSPACE)	
MANAGEMENT, LLC, GS BEVERLY,)	
LLC, GS GLOUCESTER, LLC,)	
GOTSPACE BEVERLY, LLC,)	
GOTSPACE GLOUCESTER, LLC, and)	
OCEAN INVESTMENT HOLDINGS,)	
LLC,)	
)	
Reach and Apply Defendants.)	
_____)	

**MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR REMAND
AND FOR SANCTIONS AGAINST VEXATIOUS LITIGANT**

Defendant Nicholas Fiorillo (“Fiorillo”) removed Superior Court Action 2184CV02894 (the “Superior Court Action”) for the first time on December 28, 2021. *See* 1:21-cv-12140-MLW, Docket No. This Court (Wolf, J.), remanded the case on January 13, 2022, determining that “this case was improperly removed because defendants have no[t] shown that federal

jurisdiction exists.” Docket No. 18 to 1:21-cv-12140-MLW. Now, after being defaulted by the Massachusetts Superior Court as a sanction for his non-compliance with its orders, and on the eve of the entry of judgment against him by that court, Fiorillo has removed the Superior Court Action *a second time*, notwithstanding the strict thirty-day deadline set by 28 U.S.C. § 1446(b) or lack of assent from his co-defendants. As part of this second removal, Fiorillo committed fraud on the Court by filing a civil cover sheet that falsely represented that no related action had ever been filed.

Fiorillo has engaged in this misconduct purely as part of an effort to thwart the entry of final judgment against him: until the case is remanded, the Massachusetts Superior Court presumably will not enter judgment (which it had indicated that it planned to do shortly). The Court should accordingly remand the action for a second time as soon as possible and sanction Fiorillo by: (1) ordering him to pay the reasonable attorneys’ fees and costs associated with bringing the instant motion; (2) ordering Fiorillo not to file any notices of removal in the future without leave of court; and (3) instructing the clerk’s office not to accept any such notices without leave having been granted.

FACTS

The basic facts of the Superior Court Action are set forth in the court’s memorandum and order on the original motion to remand, Docket No. 18 to 1:21-cv-12140-MLW.¹ The plaintiffs filed the Superior Court Action on December 21, 2021. In addition to various items of declaratory and injunctive relief, the plaintiffs seek the enforcement of a promissory note. All of their claims arise under Massachusetts law.

¹ A copy of the docket sheet for 1:21-cv-12140-MLW is attached as *Exhibit A*.

Fiorillo removed the case to this Court on December 28, 2021 on the basis of both diversity and federal question jurisdiction. The Court (Wolf, J.) subsequently allowed the plaintiffs’ motion for a remand, concluding that the Superior Court Action neither implicated federal claims nor involved complete diversity of citizenship.

Proceedings then continued in Massachusetts Superior Court. After Fiorillo failed to comply with the Massachusetts court’s discovery orders, it defaulted him on August 10, 2022. *See* Endorsement to Superior Action Paper No. 118. Fiorillo responded by removing the action a second time on September 1, 2022, although he did not file a civil cover sheet until September 15, 2022. Docket No. 2 to Case No. 1:22-cv-11413.² That civil cover sheet asks for the “[t]itle and number, if any, of related cases.” Fiorillo did not list any.³ The civil cover sheet also asks: “Has a prior action between the same parties and based on the same claim ever been filed in this court?” Fiorillo answered “No.” *Id.* Fiorillo filed a notice of removal stating he had removed this action to federal court, but without including the caption of the new federal court action, on September 15, 2022. The notice is purely in Fiorillo’s own name; there is no indication that the other defendants have joined in the removal.

ARGUMENT

I. This Action Must Be Remanded to Massachusetts Superior Court

A. Fiorillo’s Second Removal of the Superior Court Action Does Not Comply with Procedural Requirements

“The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based...” 28 U.S.C. § 1446(b).

² A copy of the docket sheet to this action (1:22-cv-11413) is attached as *Exhibit B*.

³ A copy of the civil cover sheet filed in this action is attached as *Exhibit C*.

Furthermore, “[i]n cases involving multiple defendants, all defendants who have been served must join or assent in the removal petition. *Garside v. Osco Drug, Inc.*, 702 F. Supp. 19, 21 (D. Mass. 1988). Failure to comply with the procedural aspects of the statute “constitutes a defect in the removal procedures and is grounds for remand.” *Murphy v. Newell Operating Co.*, 245 F. Supp. 2d 316, 318 (D. Mass. 2003).

Fiorillo’s second notice of removal plainly does not meet the 30-day statutory deadline, having been filed the better part of a year after Fiorillo was originally served with the complaint on December 23, 2021. *See* Superior Court Action Paper No. 29. Moreover, the notice of removal was not signed or otherwise joined in by the other defendants in this action (who are represented by Attorney Neil Kreuzer). The case must accordingly be remanded to the Massachusetts Superior Court.

B. Fiorillo’s Second Notice of Removal Fails to Demonstrate that Removal Is Proper Under Federal Civil Rights Laws

In any event, Fiorillo’s second notice of removal does not state a colorable claim for the exercise of federal subject matter jurisdiction. Through his first notice of removal, Fiorillo attempted to argue that the plaintiffs’ complaint implicated federal claims and that there was complete diversity of the parties. The Court rejected those arguments, *see* Docket No. 18 to 1:21-cv-12140-MLW, so Fiorillo now seeks a second bite at the apple by claiming that removal is proper under the civil rights provisions of 28 U.S.C. § 1443. *See* Docket No. 1. However, he fails to explain how any civil rights statute is implicated by the Massachusetts Superior Court’s decision to default him for failing to respond to discovery. Nor can he. To be sure, removal may be proper where a defendant shows that “he is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States,” but “[t]he Supreme Court has construed this statutory language as being limited to ‘any law

providing for specific civil rights stated in terms of racial equality.’ *Peltier v. Peltier*, 548 F.2d 1083, 1084 (1st Cir. 1977), *citing Georgia v. Rachel*, 384 U.S. 780, 792, 86 S. Ct. 1783 (1966). There is no hint in Fiorillo’s second notice of removal that he is unable to exercise his civil rights in Massachusetts because of his race.

Similarly, removal may be proper where a defendant is being sued or prosecuted for an “act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.” 28 U.S.C. § 1443(2). There is no allegation in Fiorillo’s Notice of Removal that would support removal on this ground; notably, there is no evidence that Fiorillo has attempted to enforce a civil rights statute or refused to deprive someone else of civil rights. As this Court lacks jurisdiction, the action would need to be remanded regardless of the procedural deficiencies described in Section A above. 28 U.S.C.S. § 1447(c).

II. Fiorillo Should Be Sanctioned as a Vexatious Litigant

A. Payment of Just Costs Under 28 U.S.C. § 1447(c)

“An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C. § 1447(c). If any case calls for the imposition of these sanctions, this is it. The Superior Court Action has already been removed once. The 30 day deadline for removal plainly expired months ago. Fiorillo committed fraud on the court by falsely claiming that no case between the same parties and based on the same claim ever been filed in this court. And the removal was purely for the purposes of delaying the Massachusetts Superior Court’s entry of judgment following the August 10, 2022, imposition of the sanction of default. The Court should sanction Fiorillo by ordering him to pay

the reasonable costs and expenses associated with the instant notice of removal, which the plaintiffs will substantiate by affidavit should the request be allowed.

B. Fiorillo Should Be Enjoined from Removing Cases In the Future Without Leave of Court

Fiorillo has made plain his willingness to file frivolous notices of removal in order to delay state court proceedings. He has not only removed this case (twice) but has also recently removed another state court action in which he was defaulted for disobeying court orders and referred to the Suffolk District Attorney's office for potential criminal prosecution for fraud. *See 254 Westfield LLC vs. Nicholas Fiorillo* (1:2022cv11394). A motion to remand that case to state court is pending before Judge Casper.

The Court "may impose sanctions on an unrepresented party if he or she submits a pleading for an improper purpose or if the claims within it are frivolous or malicious." *Azubuko v. MBNA Am. Bank*, 396 F. Supp. 2d 1, 7 (D. Mass. 2005). Such sanctions include "the power to enjoin litigants who abuse the court system by filing groundless and vexatious litigation." *Hunt v. Chen*, Civil Action No. 13-10197-RWZ, 2013 U.S. Dist. LEXIS 24888, at *4 (D. Mass. Feb. 20, 2013). An injunction is appropriate here in order to prevent Fiorillo from filing further frivolous notices of removal in order to interfere with the Superior Court Action (or any one of the other cases pending against him in state court). Fiorillo should accordingly be ordered not to file any further notices of removal without leave of court (and the clerk's office should be instructed not to accept such notices without such leave having been granted). *See United States Bank Nat'l Ass'n v. Orr*, 2019 U.S. Dist. LEXIS at *7 86326 (N.D. Cal. February 7, 2019) (recommending that vexatious litigant be sanctioned by being ordered to seek leave prior to filing a notice of removal and instructing the clerk not to accept further notices of removal without the granting of leave). This sanction will prevent further frivolous interference with the

Massachusetts Superior Court's exercise of its jurisdiction while permitting Fiorillo to file a meritorious notice of removal if the occasion for such ever arises.

CONCLUSION

For the reasons stated above, the motion should be allowed.

Respectfully submitted,
Samuel B. Spitalny, Jacob L. Spitalny,
Stephen Quillinan, and S&Q Data, LLC

By their attorneys,

/s/ Michael Brier
Kevin T. Peters, BBO#550522
kevin.peters@gesmer.com
Michael D. Brier BBO# 678647
Michael.brier@gesmer.com
GESMER UPDEGROVE LLP
40 Broad Street
Boston, MA 02109
Telephone: (617) 350-6800
Facsimile: (617) 350-6878

Dated: September 20, 2022

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon all counsel of record by Electronic Court Filing on September 20, 2022. I also arranged for Mr. Fiorillo to be served separately by electronic mail.

/s/ Michael Brier

EXHIBIT A

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:21-cv-12140-MLW**

Spitalny et al v. Gotspace Data Equity Fund LLC et al
Assigned to: Judge Mark L. Wolf
Case in other court: Suffolk County Superior Court,
2184CV02894
Cause: 28:1442 Notice of Removal

Date Filed: 12/28/2021
Date Terminated: 01/13/2022
Jury Demand: None
Nature of Suit: 150 Contract:
Recovery/Enforcement
Jurisdiction: Federal Question

Plaintiff

Samuel B. Spitalny

represented by **Matthew E. Burke**
The McLaughlin Brothers, LLP
One Beacon St.
17th Floor
Boston, MA 02108
617-523-7165
Email:
mburke@mclaughlinbrothers.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joel E. Faller
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One Beacon St.
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Boston, MA 02108
617-523-7165
Fax: 617-227-5240
Email:
joel.faller@mclaughlinbrothers.com
ATTORNEY TO BE NOTICED

Plaintiff

Jacob L. Spitalny

represented by **Matthew E. Burke**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joel E. Faller
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Stephen Quillinan

represented by **Matthew E. Burke**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joel E. Faller
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

S&Q Data LLC

represented by **Matthew E. Burke**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joel E. Faller
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

NICHOLAS J FIORILLO

represented by **Neil Kreuzer**
Law Office of Neil Kreuzer
268 Newbury Street
4th Floor
Boston, MA 02116
617-739-9700
Fax: 617-739-8484
Email: nkreuzer@aol.com
ATTORNEY TO BE NOTICED

Defendant

Gotspace Data Equity Fund LLC

represented by **Neil Kreuzer**
(See above for address)
ATTORNEY TO BE NOTICED

Reach and Apply Defendant

Gotspace Data Equity Fund I LLC

Reach and Apply Defendant

Gotspace Data Equity Fund 1 LLC

Reach and Apply Defendant

**GotSPACE Self Storage Holdings
LLC**

Reach and Apply Defendant

GotSPACE Management LLC

Reach and Apply Defendant

GS Beverly LLC

Reach and Apply Defendant

GS Gloucester LLC

Reach and Apply Defendant

GotSPACE Beverly LLC

Reach and Apply Defendant

GotSPACE Gloucester LLC

Date Filed	#	Docket Text
12/28/2021	<u>1</u>	Notice of Removal by NICHOLAS J FIORILLO Filing fee: \$ 402, receipt number AMADC-9115556 (Fee Status: Filing Fee paid) . (Attachments: # <u>1</u> Summonses and order of notice, state case, # <u>2</u> Other paperwork, removal of state case)(Kreuzer, Neil) Modified docket text on 12/29/2021 (Burgos, Sandra). (Attachment 2 replaced on 1/11/2022 with complete documents provided by plaintiff's counsel) (Currie, Haley). (Entered: 12/28/2021)
12/29/2021	<u>2</u>	ELECTRONIC NOTICE TO COUNSEL: Counsel shall complete and file in PDF format a Civil Cover Sheet and a Local Category Form. The forms can be found on the court's website under Resources/Forms. Counsel will use the event under Other Documents - Civil Cover Sheet & Category Sheet. (Burgos, Sandra) (Entered: 12/29/2021)
01/04/2022	<u>3</u>	Emergency MOTION to Remand to State Court by Stephen Quillinan, S&Q Data LLC, Jacob L. Spitalny, Samuel B. Spitalny.(Faller, Joel) (Entered: 01/04/2022)
01/04/2022	<u>4</u>	ELECTRONIC NOTICE of Case Assignment. Judge Mark L. Wolf assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Jennifer C. Boal. (Danieli, Chris) (Entered: 01/04/2022)
01/04/2022	<u>5</u>	Certified Copy of Notice of Removal Provided to Defense Counsel by Email (Currie, Haley) (Entered: 01/04/2022)

01/04/2022	<u>6</u>	Judge Mark L. Wolf: ORDER entered re <u>3</u> Emergency Motion to Remand to State Court filed by Jacob L. Spitalny, Samuel B. Spitalny, Stephen Quillinan, S&Q Data LLC. It is hereby ORDERED that defendants shall, by 1/6/22, respond to plaintiffs' motion to remand. (Loret, Magdalena) (Entered: 01/04/2022)
01/05/2022	<u>7</u>	CIVIL COVER SHEET and CATEGORY FORM re <u>1</u> NOTICE OF REMOVAL by NICHOLAS J FIORILLO. (Kreuzer, Neil) Modified on 1/5/2022 to adjust docket text and event used (Currie, Haley). (Entered: 01/05/2022)
01/06/2022	<u>8</u>	MOTION for Extension of Time to 1/10/2022 to File Answer by NICHOLAS J FIORILLO.(Kreuzer, Neil) (Entered: 01/06/2022)
01/06/2022	<u>9</u>	Judge Mark L. Wolf: ELECTRONIC ORDER entered granting <u>8</u> MOTION for Extension of Time to 1/10/2022 to File Answer. (Currie, Haley) (Entered: 01/06/2022)
01/10/2022	<u>10</u>	MOTION for Extension of Time to 1/11/2022 by NICHOLAS J FIORILLO.(Kreuzer, Neil) (Entered: 01/10/2022)
01/11/2022	<u>11</u>	Judge Mark L. Wolf: ORDER entered re <u>10</u> Motion for Extension of Time to January 11, 2022 ALLOWED. However, it is unlikely that any further extension will be granted. (Currie, Haley) (Entered: 01/11/2022)
01/11/2022	<u>12</u>	Supplemental MEMORANDUM in Support re <u>3</u> Emergency MOTION to Remand to State Court filed by Stephen Quillinan, S&Q Data LLC, Jacob L. Spitalny, Samuel B. Spitalny. (Faller, Joel) (Entered: 01/11/2022)
01/11/2022	<u>13</u>	Opposition re <u>3</u> Emergency MOTION to Remand to State Court filed by NICHOLAS J FIORILLO. (Kreuzer, Neil) (Entered: 01/11/2022)
01/12/2022	<u>14</u>	Opposition re <u>3</u> Emergency MOTION to Remand to State Court <i>Corrected</i> filed by NICHOLAS J FIORILLO. (Kreuzer, Neil) (Entered: 01/12/2022)
01/12/2022	<u>15</u>	Opposition re <u>3</u> Emergency MOTION to Remand to State Court <i>Exhibits 1-6</i> filed by NICHOLAS J FIORILLO. (Attachments: # <u>1</u> Exhibit 2)(Kreuzer, Neil) (Entered: 01/12/2022)
01/12/2022	<u>16</u>	MOTION to Modify Defendant's original opposition by NICHOLAS J FIORILLO.(Kreuzer, Neil) (Entered: 01/12/2022)
01/12/2022	<u>17</u>	Judge Mark L. Wolf: ELECTRONIC ORDER entered re <u>16</u> Motion for Modification

		<p>To the extent that defendants' Emergency Motion (Dkt. No. 16) seeks to substitute its corrected opposition to the motion to remand filed earlier today (Dkt. No. 14) for the opposition it filed on January 11, 2022, it is hereby ALLOWED. However, the court will not accept additional filings from defendant without prior authorization from the court. (Currie, Haley) (Entered: 01/12/2022)</p>
01/13/2022	18	<p>Judge Mark L. Wolf: ORDER entered. MEMORANDUM AND ORDER</p> <p>In view of the foregoing, the court finds this case was improperly removed because defendants have no shown that federal jurisdiction exists. Therefore, the Motion to Remand is meritorious.</p> <p>Accordingly, it is hereby ORDERED that</p> <ol style="list-style-type: none"> 1. The Motion to Remand (Dkt. No. 3) is ALLOWED. 2. This case is REMANDED to the Suffolk Superior Court of the Commonwealth of Massachusetts. (Currie, Haley) (Entered: 01/13/2022)
01/13/2022	19	<p>Judge Mark L. Wolf: ORDER entered. ORDER OF REMAND to Suffolk Superior Court. (McDonagh, Christina) (Entered: 01/13/2022)</p>

EXHIBIT B

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:22-cv-11413**

Spitalny et al v. Fiorillo et al
Assigned to:
Demand: \$9,999,000
Case in other court: Suffolk Superior Court, 2184-cv-
2894BLS1
Cause: 28:1330 Breach of Contract

Date Filed: 09/01/2022
Jury Demand: None
Nature of Suit: 150 Contract:
Recovery/Enforcement
Jurisdiction: Federal Question

Plaintiff

Samuel B. Spitalny

Plaintiff

Jacob L. Spitalny

Plaintiff

Stephen Quillinan

V.

Defendant

Nicholas Fiorillo

Defendant

GotSPACE Data Equity Fund, LLC

Reach and Apply Defendant

GotSPACE Data Equity Fund I LLC

Reach and Apply Defendant

GotSPACE Data Equity Fund 1 LLC

Reach and Apply Defendant

GotSPACE Self Storage Holdings LLC

Reach and Apply Defendant

GotSPACE Management LLC

Reach and Apply Defendant

GS Beverly LLC

Reach and Apply Defendant

GS Gloucester LLC

Reach and Apply Defendant

Gotspace Beverly LLC

Reach and Apply Defendant

Gotspace Gloucester LLC

Date Filed	#	Docket Text
09/01/2022	<u>1</u>	NOTICE OF REMOVAL by NICHOLAS J FIORILLO (Filing fee: \$ 402, receipt number AMADC-9478801 Fee Status: Filing Fee paid) (Kreuzer, Neil) (Entered: 09/01/2022)
09/15/2022	<u>2</u>	Civil Cover Sheet & Category Sheet re <u>1</u> Notice of Removal by NICHOLAS J FIORILLO. (Attachments: # <u>1</u> Civil Cover Sheet Category Sheet)(Kreuzer, Neil) (Entered: 09/15/2022)
09/15/2022	<u>3</u>	EXHIBIT re <u>1</u> Notice of Removal, <u>2</u> Civil Cover Sheet & Category Sheet by Nicholas J. Fiorillo. (Attachments: # <u>1</u> Exhibit Case Documents)(Kreuzer, Neil) (Entered: 09/15/2022)
09/15/2022	<u>4</u>	EXHIBIT re <u>1</u> Notice of Removal, <u>3</u> Exhibit, <u>2</u> Civil Cover Sheet & Category Sheet by Nicholas J. Fiorillo. (Attachments: # <u>1</u> Exhibit Case Documents)(Kreuzer, Neil) (Entered: 09/15/2022)
09/15/2022	<u>5</u>	EXHIBIT re <u>1</u> Notice of Removal, <u>3</u> Exhibit, <u>4</u> Exhibit, <u>2</u> Civil Cover Sheet & Category Sheet by Nicholas J. Fiorillo. (Attachments: # <u>1</u> Exhibit Case Documents)(Kreuzer, Neil) (Entered: 09/15/2022)
09/15/2022	<u>6</u>	EXHIBIT re <u>1</u> Notice of Removal, <u>3</u> Exhibit, <u>5</u> Exhibit, <u>4</u> Exhibit, <u>2</u> Civil Cover Sheet & Category Sheet by Nicholas J. Fiorillo. (Attachments: # <u>1</u> Exhibit Case Documents)(Kreuzer, Neil) (Entered: 09/15/2022)
09/15/2022	<u>7</u>	EXHIBIT re <u>1</u> Notice of Removal, <u>3</u> Exhibit, <u>5</u> Exhibit, <u>4</u> Exhibit, <u>6</u> Exhibit, <u>2</u> Civil Cover Sheet & Category Sheet by Nicholas J. Fiorillo. (Attachments: # <u>1</u> Exhibit Case Documents)(Kreuzer, Neil) (Entered: 09/15/2022)
09/15/2022	<u>8</u>	EXHIBIT re <u>1</u> Notice of Removal, <u>3</u> Exhibit, <u>5</u> Exhibit, <u>7</u> Exhibit, <u>4</u> Exhibit, <u>6</u> Exhibit, <u>2</u> Civil Cover Sheet & Category Sheet by Nicholas J. Fiorillo. (Attachments: # <u>1</u> Exhibit Case Documents)(Kreuzer, Neil) (Entered: 09/15/2022)
09/15/2022	<u>9</u>	EXHIBIT re <u>1</u> Notice of Removal, <u>3</u> Exhibit, <u>5</u> Exhibit, <u>7</u> Exhibit, <u>4</u> Exhibit, <u>8</u> Exhibit, <u>6</u> Exhibit, <u>2</u> Civil Cover Sheet & Category Sheet by

		Nicholas J. Fiorillo. (Attachments: # 1 Exhibit Case Documents)(Kreuzer, Neil) (Entered: 09/15/2022)
09/15/2022	10	EXHIBIT re 1 Notice of Removal, 3 Exhibit, 5 Exhibit, 4 Exhibit, 6 Exhibit, 9 Exhibit, 7 Exhibit, 8 Exhibit, 2 Civil Cover Sheet & Category Sheet by Nicholas J. Fiorillo. (Attachments: # 1 Exhibit Case Documents, # 2 Exhibit Case Documents)(Kreuzer, Neil) (Entered: 09/15/2022)
09/15/2022	11	EXHIBIT re 1 Notice of Removal, 3 Exhibit, 5 Exhibit, 7 Exhibit, 4 Exhibit, 8 Exhibit, 6 Exhibit, 10 Exhibit, 9 Exhibit, 2 Civil Cover Sheet & Category Sheet by Nicholas J. Fiorillo. (Attachments: # 1 Exhibit Case Documents)(Kreuzer, Neil) (Entered: 09/15/2022)

EXHIBIT C

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SAMUEL B. SPITALNY, JACOB L. SPITALNY,
STEPHEN QUILLINAN and S&Q DATA, LLC

(b) County of Residence of First Listed Plaintiff Fulton County, GA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kevin T. Peters 40 Broad Street Boston, MA 02109
(617) 350-6800

DEFENDANTS

NICHOLAS FIORILLO and GOTSPACE DATA EQUITY
FUND, LLC

County of Residence of First Listed Defendant Barnstable
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Pro Se

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input checked="" type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1443; U.S. Const. Ann. Art. III Sec. 2 Clause 1
Brief description of cause:
Denial by State Court of Equal Civil Right to Due Process Under the Laws of the United States of America

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

August 29, 2022

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) SAMUEL B. SPITALNY v. NICHOLAS FIORILLO
-
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 400, 410, 441, 535, 830*, 835*, 850, 880, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.
- ☒ III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 485, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.
- *Also complete AO 120 or AO 121. for patent, trademark or copyright cases.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
-
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☐
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☒ NO ☐

(PLEASE TYPE OR PRINT)

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